

Notice of Allowability

Application No.

09/836,705

Examiner

Kathleen M. Kerr

Applicant(s)

ABE ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4/19/05.
2. ☒ The allowed claim(s) is/are 69-94.
3. ☒ The drawings filed on 17 April 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

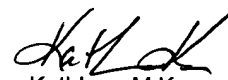
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 4/19/05
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Kathleen M Kerr
Primary Examiner
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DETAILED ACTION

Application Status

1. In response to the previous Office action, a non-final rejection (mailed on January 13, 2005), Applicants filed a response and amendment received on April 11, 2005. Said amendment cancelled Claims 1-57, 60-65, and 67-68 and added new Claims 69-94. Thus, Claims 69-94 are pending in the instant Office action and will be examined herein.

Priority

2. As previously noted, the instant application is granted the benefit of priority for the foreign application 2000-116591 filed in Japan on April 18, 2000 and 2000-117458 filed in Japan on April 19, 2000. Receipt was previously acknowledged of papers submitted under 35 U.S.C. § 119(a)-(d), which papers have been placed of record in the file. Said papers are not in English; no English translations have been filed.

Information Disclosure Statement

3. The information disclosure statement filed on April 19, 2005 has been reviewed, and its references have been considered as shown by the Examiner's initials next to each citation on the attached copy.

Withdrawn - Claim Objections

4. Previous objection to Claims 40 and 43 for misspelling "Pennicilium" in its 4th occurrence is withdrawn by virtue of Applicant's cancellation of said claims.

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5. Previous objection to Claim 42 under 37 C.F.R. § 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim is withdrawn by virtue of Applicant's cancellation of said claim.

6. Previous objection to Claims 56, 57, and 65 for containing redundant language that is arduous to read is withdrawn by virtue of Applicant's amendment.

Withdrawn - Claim Rejections - 35 U.S.C. § 112

7. Previous rejection of Claims 40-43, 45, 60-64, and 67-68 under 35 U.S.C. § 112, second paragraph, as being indefinite for the term "corresponding to" is withdrawn by virtue of Applicant's amendment eliminating said term from the pending claims.

8. Previous rejection of Claims 43 and 64 under 35 U.S.C. § 112, second paragraph, as being indefinite for the term "gene" being used in a manner that is inconsistent with the art is withdrawn by virtue of Applicant's amendment eliminating said term from the pending claims.

Conclusion

9. Claims 69-94 are allowed as filed by Applicant.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M. Kerr whose telephone number is (571) 272-0931.

The examiner can normally be reached on Monday through Friday, from 9:00am to 6pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathupura Achutamurthy can be reached on (571) 272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen M Kerr
Primary Examiner
Art Unit 1652

June 14, 2005